APPEAL NO. 040920
FILED JUNE 10, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on March 31, 2004. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 19th quarter, January 1 through March 31, 2004. The claimant appealed, disputing the determination of nonentitlement. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The parties stipulated that on _____, the claimant sustained compensable injuries to his left knee, right wrist, and lumbar spine resulting in a 19% impairment rating; that the claimant did not commute his impairment income benefits; that the qualifying period for the 19th quarter began on September 19 and ended on December 18, 2003; and that the claimant's average weekly wage is $467.19. Although the record reflects that the claimant's position at the benefit review conference was that he had a total inability to work, the claimant testified that on October 8, 2003, he opened his own business, a car wash, and acknowledged that he earned income from this business during the qualifying period.

The hearing officer specifically found that the evidence that the claimant earned less than 80% of his average weekly wage is not credible; that the claimant was not enrolled in and did not participate in any vocational rehabilitation program during the qualifying period; that the claimant did not seek employment every week of the qualifying period; that the claimant did not provide a narrative report which explained how the compensable injury causes a total inability to work; that the claimant's underemployment during the qualifying period, if any, was not a direct result of his impairment from the compensable injury; and that the claimant's physical activities during the qualifying period controvert the opinion that the claimant was totally unable to work at that time. The hearing officer concluded that the claimant is not entitled to SIBs for the 19th quarter.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision for factual sufficiency of the

evidence, we should reverse such decision only if it is so contrary to the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no grounds to reverse the challenged findings of the hearing officer.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Veronica L. Ruberto
Appeals Judge